

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:20-cv-524-FL

JAMES BLACKMON, a/k/a Jimmy Andrew
Underwood, by and through his GUARDIAN
OF THE ESTATE, PAUL TRUETT
CANADY, II,

Plaintiff,

v.

JAMES HOLDER, in his individual capacity,
ANDREW MUNDAY, in his individual
capacity, and the CITY OF RALEIGH,

Defendants.

**MOTION TO DISMISS BY
DEFENDANT ANDREW MUNDAY
FED. R. CIV. P. 12(b)(1) and (6)**

NOW COMES Defendant Andrew Munday, in his individual capacity, by and through counsel, pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure, and respectfully moves the Court for entry of an Order dismissing all of Plaintiff's claims against him. Plaintiff's Complaint fails to state a claim for relief for the following reasons, *inter alia*:

1. Plaintiff's federal and state claims are barred by N.C. Gen. Stat. § 1-52(16), North Carolina's statute of repose;
2. Counts I and II of Plaintiff's Complaint are barred by the *Rooker-Feldman* doctrine;
3. Count V of the Complaint fails because Plaintiff's conspiracy claim is barred by the intracorporate immunity doctrine and Plaintiff fails to state a cognizable claim for civil obstruction of justice; and
4. Plaintiff's claims brought directly under the North Carolina Constitution should be dismissed because Plaintiff has adequate remedies at state law.

Pursuant to E.D.N.C. Local Civil Rules 7.1 and 7.2, an accompanying memorandum of law is being filed contemporaneously herewith.

Respectfully submitted, this the 7th day of December, 2020.

/s/ Sonny S. Haynes

Rachel E. Keen

N.C. State Bar No. 27777

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Attorneys for Defendant Andrew Munday

CERTIFICATE OF SERVICE

I certify that on December 7, 2020, I electronically filed the foregoing **MOTION TO DISMISS BY DEFENDANT ANDREW MUNDAY** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all Counsel of record.

/s/ Sonny S. Haynes

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